a further enquiry and calculate the total amount due to the plaintiff, unless within two weeks from the date of such declaration, the parties themselves agree to the correct figure.

The further consideration of this action is adjourned.

The parties have liberty to apply.

Solicitors for the Plaintiff: *Braddell Brothers.*

Solicitor for the 2nd Defendant: *S. C. Goho.*

THIS COURT DOTH DECLARE

(1) That the shares specified in paragraph 2 of the Statement of Claim herein and hereinafter called the said miscellaneous shares *viz.*—1000 Ayer Panas shares, 500 Ayer Molek shares, 200 Bukit Kajang shares, 100 Tebong shares, 145 Punggor shares were the private property of S. V. S. Supramanian Chetty deceased at the time of his death;

(2) That the 5 shares out of the 1st defendant's 13 shares in the Chop Leong Watt Hin rubber estate, mentioned in paragraph 3 of the Statement of Claim herein and hereinafter called the said Leong Watt Hin shares were the private property of the said S. V. S. Supramanian Chetty deceased at the time of his death;

(3) That the 1st Defendant was at the date of the death of the said S. V. S. Supramanian Chetty deceased trustee of the said miscellaneous shares and subject to what is directed further herein below must account to the plaintiff for the said shares and all moneys received or which he ought to have received in respect thereof either by way of sale or dividend;

(4) That the 2nd defendant was trustee for the estate of the said S. V. S. Supramanian Chetty deceased of all moneys paid to him or his agents in respect of the said Leong Watt Hin shares and must account to the Plaintiff for all such moneys;

(5) That the 2nd defendant received as trustee for the estate of the said S. V. S. Supramanian Chetty deceased the 1,250 shares in the Leong Watt Hin Estate Ltd. mentioned in paragraph 13 of the Statement of Claim herein and must account to the Plaintiff for the said shares and for all moneys received or which ought to have been received by him or his agents in respect thereof either by way of dividend or otherwise;

AND THIS COURT DOTH DIRECT AND ORDER that the following accounts be taken and enquiry held, that is to say:—

(*a*) an account of all moneys received by the 1st Defendant in respect of the said miscellaneous shares, the 1st Defendant being entitled on the taking of such account to credit himself with the unsold 1,000 Ayer Panas, 100 Tebong and 145 Punggor shares which he handed over to the 3rd party S. V. S. Sanmugam Chetty on the 22nd July, 1915;

(*b*) an account of all moneys received by the 2nd defendant or his agents in respect of the said Leong Watt Hin shares;

(*c*) an account from November 20th 1917, of all moneys received or which ought to have been received by the 2nd Defendant or his agents in respect of the said 1,250 shares in the Leong Watt Hin Estate Ltd.

(*d*) an enquiry to ascertain what has been the highest value which a share in the Leong Watt Hin Estate Ltd. has reached prior to the date of this judgment;

AND THIS COURT DOTH DECLARE that upon the taking of the said account (*a*) above directed the 1st Defendant is estopped from crediting himself with any moneys alleged by him to have been paid out of any dividends received by him upon the said miscellaneous shares;

AND THIS COURT DOTH DIRECT that upon the taking of the said account (*a*) above directed the 1st defendant shall be debited with simple interest at the rate of 5 per centum per annum upon all sums received by the 1st Defendant from the date of their receipt and that upon the taking of the Accounts (*b*) and (*c*) above directed the 2nd Defendant shall be debited with punitive interest at the rate of 6 per centum with yearly rests upon all sums received or which ought to have been received, as the case may be, by him or his agents from the date when such sums were or ought to have been so received;

THE END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.

[ORIGINAL CIVIL JURISDICTION]
HUGGARD, C.J.
September 22, 1933.
[APPELLATE JURISDICTION]
THOMAS, C.J. (F.M.S.), GERAHTY and MILLS, JJ.
December 1, 1933.

RE CHOP KWONG FOOK SENG & CHAN CHAN PHANG *ALIAS* CHAN YING CHEONG a partner thereof, *EXPARTE* THE NATIONAL, COMMERCIAL & SAVINGS BANK (S'PORE), LTD. (In Voluntary Liquidation).

[SINGAPORE BANKRUPTCY No. 378 of 1933]
[SINGAPORE CIVIL APPEAL No. 24 of 1933]

Bankruptcy—Judgment entered against firm—Bankruptcy Notice addressed to firm and a partner thereof—whether form of notice misleading—proof of residence of debtor—illegal partnership—Receiving Order against partner—Ordinance No. 44 (Bankruptcy) Ss. 3 (1) (i), 86, 91(5), Bankruptcy Rule 13, Civil Procedure Code, s. 780.

A Receiving Order was made against a partner of a firm against whom the petitioning creditors had recovered judgment in the firm name. The Petition was founded upon an act of bankruptcy consisting of failure to comply with a Bankruptcy Notice issued to the firm and to the partner. In the petition it was alleged that the debtor (that is, the partner) "had for the greater part of six months next preceding the presentation of the petition resided or carried on business at No. 45, Hongkong Street and/or 43, Upper Hokien Street, Singapore, within the District of the Court." The petition was supported by the usual affidavit verifying the statements therein. In fact the petitioner had no personal knowledge of the place of residence or of business of the debtor. Upon the hearing of the petition it was contended on behalf of the debtor that (1) the residence of the debtor had not been proved (2) the Bankruptcy Notice did not follow the judgment and (3) the judgment was invalid by reason of its having been entered against an illegal association.

Held, (by Huggard, C.J. and confirmed on appeal) that failure to furnish strict proof as to the carrying on of business or residence of a debtor is no ground for rejecting the petition.

Held further, that the debtor could not have been misled or perplexed by the form in which the Bankruptcy Notice was addressed.

In re Wenham, (1900) 2 Q.B. 698, applied.

Held also, that the illegality of the partnership affords no reason for refusing to make a Receiving Order against a partner therein.

Bankruptcy Petition heard before Huggard, C.J., on the 5th and 6th September, 1933.

Battishill (*Seth* with him) for the Petitioning Creditors, The National Commercial & Savings Bank (Singapore), Ltd. (In Voluntary Liquidation).

Walters for Chan Chan Phang, the debtor.

The material facts appear from the judgments.

Cur. Ad. Vult.

HUGGARD, C. J.—This is a Petition for a Receiving Order against one Chan Chan Phang alias Chan Ying Cheong.

The facts leading up to the Petition are that on the 22nd September, 1932, in Suit No. 439 of 1932, the National Commercial & Savings Bank (Singapore) Ltd. (In voluntary Liquidation), who are the present Petitioning Creditors, obtained Judgment against Chop Kwong Fook Seng for $19,578.29 and costs. On the 26th July, 1933, a Bankruptcy Notice was issued and directed to Chop Kwong Fook Seng and to Chan Chan Phang alias Chan Ying Cheong a partner in Chop Kwong Fook Seng. The Bankruptcy Notice was not complied with and the Petitioning Creditors now ask for a Receiving Order against Chan Chan Phang who is hereinafter referred to as "the debtor."

In opposing the Petition on behalf of the debtor Mr. Walters raises a number of points.

The first point is that the statements in the Petition have not been proved as required by the Bankruptcy Rules, and, in particular, that the statement relating to the residence or place of business of the debtor has not been proved. Firstly, Mr. Walters contends that even if the debtor had not appeared at the hearing of the Petition the usual covering affidavit, which states that the several statements in the Petition are true within the knowledge of the deponent, is not sufficient proof of these statements. In support of this contention Mr. Walters relies on the case of *Ex parte Lindsay* (L.R. 19 Eq. 59) where it was held that at the hearing of a Bankruptcy Petition, even though the respondent has given no notice of his intention to show cause against the Petition, and does not appear, the allegations contained in the Petition must be supported by further evidence than the common affidavit (presumably our Form No. 11). The long-established practice of this Court, however, in cases where the debtor does not appear, has been to accept the usual covering affidavit, together with an affidavit to the effect that the debt is still-due, as sufficient proof of the statements in the Petition. In spite of the authority cited by Mr. Walters I am not prepared to hold that this practice is incorrect. Bankruptcy Rule 118 provides that if the debtor does not appear the Court may make a Receiving Order on such proof of the statements in the Petition as the Court thinks sufficient; and under section 91 (5) of the Ordinance the Court may in any matter take the whole or any part of the evidence either *viva voce* or upon affidavit. All that is necessary therefore in any such case is that the Court should be *satisfied* that the statements in the Petition are adequately proved. Secondly, as to the statement in the Petition relating to the residence or place of business of the debtor, Mr. Walters contends that it has not been proved at all, as, although Mr. Wotherspoon purports by his covering affidavit to testify that to his own knowledge the debtor has for the greater part of six months resided or carried on business at No. 45, Hongkong Street and/or No. 43, Upper Hokien Street, Singapore, he admitted in answer to Mr. Walters that he had no direct personal knowledge of this. This point does not seem to me to be material in the present matter as in fact the debtor has been personally served at No. 43, Upper Hokien Street with both the Bankruptcy Notice and the Petition, and he appeared at the hearing of the Petition. I think it right to observe, however, that persons who swear the usual covering affidavit verifying the statements in a Bankruptcy Petition should be careful to confine themselves to stating the facts which are true to their own personal knowledge. The Form of affidavit (Form 11) bears the following note which is supported by Bankruptcy Rule 106:—

> "If the petitioner cannot depose that the truth of all the several statements in the petition is within his own knowledge he must set forth the statements the truth of which he can depose to, and file a further affidavit by some person or persons who can depose to the truth of the remaining statements."

Clearly it is not enough that the deponent should *believe* the statements in the Petition to be true, they must be true within his knowledge otherwise he is not in a position to depose to them.

In the next place Mr. Walters contends that the Bankruptcy Notice, on which the Petition is founded, is defective in certain respects. Firstly, he points out that the request for the issue of the Bankruptcy Notice is in the name of and is signed by Messrs. Sisson & Delay as Solicitors for the Judgment creditor, and he contends that, according to Form 4, the request should be *made* by the Judgment Creditor though it may be *signed* by his solicitors. I do not think there is anything in this point and I gathered that Mr. Walters did not think much of it either. Secondly, Mr. Walters says that the Bankruptcy Notice is perplexing in regard to the address at which the judgment debt is required to be paid. As I indicated during the course of the argument, I think that the Bankruptcy Notice on this point is as clear as it could possibly be in the circumstances and it can have left the debtor in no sort of doubt as to where and to whom he should pay the debt if he so desired. Thirdly, Mr. Walters says that the Bankruptcy Notice is not in accordance with the judgment as required by section 3 (1) (i) of the Ordinance because it is addressed to Chop Kwong Fook Seng *and* to Chan Chan

Phang a partner thereof, whereas the judgment was only against the Chop. Assuming for the moment that the judgment was properly entered against the Chop and that Chan Chan Phang was a partner, my view is that there is no reason why the name of a partner against whom it is intended to proceed should not appear in the Bankruptcy Notice. This view is supported by the following observation of Lord Alverstone, L.C.J., in *In re Wenham* [(1900) 2 Q.B. 698, at page 706]:—

> "I see no reason why it should not be indicated if necessary on the face of the bankruptcy notice that it is directed to the members of the firm by their individual names, although the body of it must follow the judgment"

Notwithstanding Mr. Walters' comments regarding this learned Judge I cannot see any sufficient reason for rejecting the view expressed by him on this point, and it may be noted that it was not dissented from by the other members of the Court of Appeal in that case. Further, Lord Alverstone's view was followed by Sproule, J. in *Re Leong Cheong & Co.* (1930 S.S.L.R. 155, at page 160). In any event even if there is an irregularity or a mistake on this point in the Bankruptcy Notice it is clear that it was not such an irregularity or a mistake as could in any way mislead the debtor and therefore there can be no valid reason for holding that the Bankruptcy Notice was defective (*In re Low*; Manson's Cases Vol. II, page 169).

Mr. Walters' final point is that, as Chop Kwong Fook Seng was an illegal partnership consisting of more than twenty persons (and therefore prohibited and illegal under section 4 of Ordinance 155 (Companies)), judgment should never have been entered against the Chop, that the judgment should be treated as illusory and non-existent as having been made against an illegal and consequently non-existent Chop which the law regards as a phantom, and that therefore a Receiving Order founded on that judgment cannot now be made against one of the partners. The facts are that the present Petitioning Creditors issued a writ against Chop Kwong Fook Seng claiming monies due in respect of certain Contracts of Exchange; an appearance was entered for Chan. Chan Phang who is described as the Managing Partner of the Defendants, and eventually judgment was entered by *consent* for $19,578.29 and costs. Chop Kwong Fook Seng subsequently turned out to be an illegal partnership inasmuch as it consisted of more than twenty persons. The question is, therefore, whether or not the judgment should in the circumstances have been entered against the Chop. It is provided in section 780 (1) of the Civil Procedure Code that any two or more persons, claiming or being liable as co-partners, and carrying on business within the jurisdiction, may sue and be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action. This sub-section is taken from the English Order XLVIII A, rule I, which is in similar terms and there is nothing in its express terms which in any way limits its operation to cases where a firm is properly and legally constituted. In the Notes to section 780 in Van Someren it is stated that:—

> "This form of suing a firm is permitted only for convenience, the firm does not carry on business, but the partners, or sole partner, do or does so."

This Note is apparently based on the Judgment of Farwell, L.J. in *Sadler* v. *Whitman*, (1910) 1 K.B. 868, where he says at page 889:—

> "That fallacy is to say that a partner in a firm does not, but the firm does, carry on business. In English law a firm as such has no existence; partners carry on business both as principals and as agents for each other within the scope of the partnership business; the firm name is a mere expression, not a legal entity, although for convenience under Order XLVIIIA it may be used for the sake of suing and being sued."

It seems to me therefore that where two or more persons are carrying on business under a firm name, they may, for the purpose of getting the partners before the Court, be sued in the firm name whether or not the firm is legally and properly constituted. It is stated in Lindley on Partnership, 9th ed., at page 140, that "the illegality of a partnership affords no reason why it should not be sued," and I cannot find anything in the numerous authorities to which I have been referred which conflicts with this view.

Accordingly, in my opinion, the judgment in question was properly entered against Chop Kwong Fook Seng, and in the circumstances I can see no sufficient ground for refusing to make a Receiving Order against Chan Chan Phang who was admittedly the managing partner; I make the Order accordingly.

I give the Petitioning Creditors leave to amend paragraph 3 of the Petition on the lines indicated in the letter dated the 26th August, 1933, from Messrs. Sisson & Delay to Messrs. Allen and Gledhill which is set out in the affidavit of A. V. Monteiro dated the 2nd September, 1933.

From the above decision the debtor appealed to the Court of Appeal. The appeal came on for hearing before Thomas, C.J., F.M.S., Gerahty and Mills, J.

Walters for the debtor (Appellant).

Roland Braddell (*Battishill* with him) for The National, Commercial & Savings Bank (Singapore) Ltd., (In voluntary liquidation) (Respondents).

Cur. Ad. Vult.

THOMAS, C.J. (F.M.S.)—This is an appeal against a receiving order made by the learned Chief Justice of the Straits Settlements against the appellant Chan Chan Phang *alias* Chan Ying Cheong, a partner in a partnership business known as the Chop Kwong Fook Seng.

A judgment had been obtained by the National Commercial and Savings Bank (S'pore), Limited against the Chop Kwong Fook Seng. The appellant was at that time the managing partner of the chop and as such entered an appearance to the suit and eventually consented to judgment. The judgment debt not having been paid, a bankruptcy notice was served on the appellant.That notice was addressed to the Chop Kwong Seng and to Chan Chan Phang.

On that notice a creditor's petition was founded, and an affidavit verifying the position was sworn by Mr. J. W. Wotherspoon, the Secretary of the Estate & Trust Agencies (1927) Ltd., who were the liquidators of the National Commercial and Savings Bank (Singapore), Ltd., (In voluntary liquidation).

The petition asked that a receiving order should be made in respect of the estate of Chan Chan Phang *alias* Chan Ying Cheong lately carrying on business at No. 45 Hong Kong Street, Singapore, as the managing partner of Chop Kwong Fook Seng, formerly of No. 45 Hong Kong Street, Singapore. Paragraph 1 of the petition was as follows:—

> "That the said Chan Chan Phang *alias* Chan Ying Cheong had for the greater part of six months next preceding the presentation of the petition resided or carried on business at No. 45, Hong Kong Street and/or 43, Upper Hokkien Street, Singapore within the district of this Court."

The appellant gave notice that he intended to oppose the petition and that he disputed

(1) the statement as to his residence or carrying on business as either 45 Hong Kong Street or 43 Hokkien Street for the greater part of six months next preceding the presentation of the petition;
(2) the validity of the judgment on the ground that the Chop Kwong Fook Seng was an illegal association in that it consisted of twenty members;
(3) the bankruptcy notice was calculated to perplex and as being of such a character as to make it unjust that the same should be given any force or validity.

At the hearing of the petition, Mr. Wotherspoon was cross-examined on his affidavit, and he admitted that he did not know Chan Chan Phang, had never seen him, and had never been to his house or to any place of business of his. A legal argument on the various grounds of objection was heard, and in the end, as stated above, a receiving order was made.

From that order the appellant appeals on the grounds:—

(1) that the statements contained in paragraph 1 of the petition had not been proved;
(2) the bankruptcy notice was bad because it did not follow the judgment;
(3) the judgment which was the foundation of the bankruptcy notice was not valid as having been obtained against an illegal association.

There are further grounds which set out specifically objections to the view of the law taken by the learned Chief Justice.

Before proceeding further I should state that it had been agreed that the decision in Bankruptcy Case No. 666 as to a receiving order being made against the partnership should be accepted in this case. The decision with regard to Bankruptcy Case 666 was that, being an illegal association no receiving order should be made. It is, therefore, accepted for the purposes of this case that the Chop Kwong Fook Seng was an illegal association.

In view of the notice of objection and the appearance of the debtor by his advocate, it was necessary that proof should be given as to the petitioning creditor's debt and the act of bankruptcy or such of those matters as the debtor shall have given notice that he intends to dispute (Bankruptcy Rule 119).

It has been stated in the judgment of the learned Chief Justice that it is the practice in this Colony to accept the affidavit verifying the petition as sufficient proof. But even if such a practice exists, a matter can hardly be said to have been proved by an affidavit which has been shown to have been made by a person who admits that he has no personal knowledge of the matter. Such being the case, it is not possible to say that the question of residence or carrying on business for the greater part of six months prior to the bankruptcy notice has been proved by the verifying affidavit.

There was no other evidence before the Court either directly or indirectly which would enable the court to find that the question of residence or carrying on business mentioned in paragraph 1 of the petition had been proved.

This objection does not go to the proof of the whole petition but only as to the jurisdiction of the Court at Singapore. Section 86 of the Bankruptcy Ordinance (No. 44) deals with the question of jurisdiction. Sub-section 2 provides that the petition shall be presented to the Court at the Settlement in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition. Sub-section 3 says:—

> "Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong branch of the Court."

Sub-section 4 provides for the transfer of cases, and goes on to say that any proceedings may be retained in the Settlement in which the proceedings were commenced, although it may not be the court in which the proceedings ought to have been commenced. These sub-sections should be read together. They give the widest powers to the Court to deal with the matter once it has been brought before the Court.

Evidence as to the carrying on of business or residence may not always be procurable, and when in a case such as the present it has not been procured, it would seem to be no ground for the rejection of the petition. The objection can only go to the question as to whether the petition has actually been commenced in the right Court and the rules provide (see Bankruptcy Rule 13) that unless and until a transfer is made under the Rules, the proceeding shall continue in the Settlement in which it was commenced. And even when by inadvertence a petition is presented in a wrong bankruptcy Court, the Court, to which it is presented, has jurisdiction to make a Receiving Order. [See *Ex parte May*; *In re Brightmore*, 14 Q.B.D. 37; and also *in re French, Ex parte French*, (1889) 24 Q.B.D. 63].

The appellant has not at any time set forth any fact either to show that he was not resident or carrying on business in Singapore, or that he was resident or carrying on business in any other Settlement. When he was served with the bankruptcy notice and also a copy of the petition, he was on each occasion, viz: 28th of July, and 16th of August, 1933, found at No. 43, Upper Hokkien Street, Singapore.

In my opinion, therefore, the objection is without substance and should not be entertained, and this ground of the appeal fails.

The next ground of the appeal relates to the form of the bankruptcy notice. This was addressed to Chop Kwong Fook Seng, formerly of 45, Hong Kong Street, Singapore, and to Chan Chan Phang, *alias* Chan Ying Cheong of 43, Upper Hokkien Street, Singapore, a partner in Chop Kwong Fook Seng.

The question for the consideration of the Court is whether the appellant might be misled or perplexed by the form of the notice (See *In re a Judgment Debtor*, 1908, 2 K.B. page 474). The appellant as a partner in the firm against which judgment had been obtained must have known that he was personally liable to pay the debt. He must, therefore, have known that a judgment had been obtained against him as a member of the partnership.

In the case of *In Re Wenham*, 1900, 2 Q.B. 698, in the course of his judgment Alverstone, L.J. said:

> "I see no reason why it should not be indicated on the face of the bankruptcy notice that it is directed to the members of the firm by their individual names although the body of it must follow the judgment."

Rigby, L.J., in his judgment said:

> "For my part, I think Mr. Cooper Willis is right in saying that you must follow the judgment. It would not be wise or perhaps even permissible to vary so much from the judgment as to include in the notice the individual names of the members."

But Alverstone, L.J., also said:

> "He was told that the notice was in respect of a debt incurred while he was a partner in *Wenham Brothers*, and in my opinion, there is no ground for saying in the language of section 143 that any 'substantial injustice has been caused by the defect or irregularity' in the notice; but I see no reason why the address should not be amended, if desired."

And Collins, L.J., said at page 709:

> "But whether that is the meaning or not, I think this is obviously a case in which the Court should exercise the power of amendment if it has that power; and it seems to me that the 143rd section amply covers this particular case."

So it would seem that in that case an amendment was allowed to enable the very thing to be done which has already been done in this case. When such an amendment to an address may be allowed, it would be impossible to say that it was wrong in being done in the first instance. I am satisfied that there has been no hardship in this case, and that the appellant has been in no wise misled or perplexed by the method of address adopted.

As to the last ground of appeal, there is nothing in this case to suggest that the creditor was in any way aware of the illegality of the Chop Kwong Fook Seng, and the question immediately arises whether an innocent creditor can be deprived of the benefits of a judgment which he has obtained.

In the case of *In re South Wales Atlantic Steamship Co.*, (1876) 2 Ch. D. page 763, at page 781 Mellish, L.J. said:

> "I should be very unwilling to hold, unless I find myself absolutely compelled to do so, that a purely innocent person who employs a partnership of the kind can be prevented from maintaining an action against all the members of it who are practically interested in it, because without his knowing it, they happen to be more than twenty. Suppose a common ordinary partnership were carrying on their business, it seems to me a very extraordinary thing that a creditor should have any obligation put upon him to inquire whether the partners were more than twenty or not."

In the case of *In re Padstow Total Loss and Collision Assurance Association*, (1881-2) 20 Ch. D. 137 at page 150, Lindley, L.J. said:

> "I have some little difficulty in following out the doubt expressed by Mellish, L.J. in the *South Wales Atlantic Steamship Company*. If a man knows only of some fifteen or sixteen persons as carrying on business together, and deals with them, he can sue them, and he can say 'you have been trading under such a name and I will obtain an order to wind you up.' I doubt whether they could escape by showing that they were illegally associated with thirty or more persons of whom they had never heard."

The learned Chief Justice has referred to the passage in Lindley on Partnership, 9th Ed. at page 140, that "the illegality of a partnership affords no reason why it should not be sued." There is also a similar passage in Chitty on Contracts, 18th Ed. at page 296.

The learned Chief Justice has said that he cannot find anything in the numerous authorities to which he has referred which conflicts with this view.

I confess to a similar difficulty. Yet I should hesitate to act on these passages, since, where a suit has been commenced against an illegal partnership the objection should be taken, and where taken the court could hardly allow judgment to be entered but call upon the plaintiff to amend his writ so as to show those of the partners with whom the contract was entered into.

Where there is an illegal partnership the right of agency could scarcely exist, and it would seem to be open to any one of the partners to move to have the judgment set side. If such be the correct course to adopt, any one of the partners other than the appellant who has consented to judgment might move the Court. No step has been taken to have the judgment set aside.

It has been urged that a Judge sitting in Bankruptcy has the powers of a Judge of Equity, and may go behind the judgment to consider the various matters connected with it, and that in this case this course should be adopted. But such a Judge could only take such action when all the matters were fully before him, and even now all matters are not fully before the Court. There would therefore, seem to have been no power on the part of the Court to intervene at this stage. It may be that the Official Assignee or the Trustee might take some action with regard to a proof based on such a judgment. This would leave it open to the creditor to put in an amended proof. Those matters can be fully dealt with in the bankruptcy. To go behind the judgment at this stage might cause irretrievable injustice to a creditor in favour of a debtor in respect of whom his own advocate had to admit that there were no merits of any kind.

This ground of appeal is therefore also rejected.

GERAHTY, J.—I agree.

MILLS, J.—I agree.

Appeal dismissed.

Solicitors for the Appellant—*Allen & Gledhill.*
Solicitors for the Respondents—
Sisson & Delay.